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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TEVRA BRANDS, LLC,

Plaintiff,

vs.

BAYER HEALTHCARE LLC,

Defendant.

Case No.: 5:19-cv-04312-BLF

Action Filed: July 26, 2019

**BAYER HEALTHCARE LLC'S ANSWER
TO SECOND AMENDED COMPLAINT**

The Honorable Beth Labson Freeman

Defendant Bayer HealthCare LLC (“BHC”)¹ answers Plaintiff Tevra Brands, LLC’s (“Tevra”) Second Amended Complaint (“SAC”) as follows:

With regard to the introductory section of Tevra’s SAC, BHC notes that the Court dismissed the allegations against Bayer Animal Health GmbH (“BAH GmbH”) in its January 6, 2022 order, and thus BAH GmbH is no longer a defendant in this action.² Tevra also correctly notes that the SAC does not include claims against Bayer AG. The remainder of Tevra’s allegations in its introductory section set forth legal conclusions for which no response is required. To the extent a response is required, BHC will address these allegations below in response to the specific allegations contained in Paragraphs 1–233 of the SAC.

NATURE OF ACTION

1. BHC admits that Tevra competes with BHC and denies that Tevra’s generic alternatives are more effective than BHC’s imidacloprid topical products. Tevra’s allegations regarding the relevant antitrust market set forth legal conclusions for which no response is required. BHC denies the remaining allegations in Paragraph 1. The allegations regarding Bayer Animal Health GmbH (“BAH GmbH”) require no response because BAH GmbH is no longer a defendant in this action.

2. BHC admits that it sells “squeeze-on” imidacloprid topical flea and tick treatments for dogs and cats, which are purchased by retailers, distributors, veterinarians, and consumers in the United States. BHC admits that its brands of imidacloprid topicals include Advantage and Advantix, which have been sold in the U.S. under brand names including Advantage®, Advantage® II, K9 Advantix®, and K9 Advantix® II. BHC denies the remaining allegations in Paragraph 2.

3. BHC admits that Tevra makes generic imidacloprid topicals and denies that Tevra’s imidacloprid topicals are more effective than BHC’s imidacloprid topicals. Tevra’s allegations

¹ This Answer is filed on behalf of BHC, which is the sole remaining named defendant. However, as noted in BHC’s Corporate Disclosure Statement (ECF 52), BHC’s parent company, Bayer AG, entered into an agreement in August 2019 with Elanco Animal Health Inc. for the sale of Bayer’s Animal Health business to Elanco Animal Health Inc. That transaction closed in 2020.

² The SAC defines the term “Bayer” to include both BHC and BAH GmbH. However, since the Court dismissed the allegations against BAH GmbH in its January 6, 2022 order, BHC responds only as to itself when the SAC uses the umbrella term “Bayer.”

1 regarding the relevant antitrust market set forth legal conclusions for which no response is required,
2 and BHC denies the remaining allegations in the final sentence of Paragraph 3. BHC lacks
3 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
4 Paragraph 3, and therefore denies them.

5 4. Tevra's allegations in the first sentence of Paragraph 4 regarding the relevant
6 antitrust market set forth legal conclusions for which no response is required. BHC denies the
7 remaining allegations in Paragraph 4.

8 5. Tevra's allegations regarding the relevant antitrust market set forth legal conclusions
9 for which no response is required. BHC denies the remaining allegations in Paragraph 5.

10 **PARTIES**

11 6. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in Paragraph 6, and therefore denies them.

13 7. BHC notes that the fourth sentence of Paragraph 7 attempts to characterize the
14 business that is "relevant to this action" and denies the allegations in the fourth sentence of
15 Paragraph 7 on the basis that they are vague and ambiguous. BHC admits the remaining allegations
16 in Paragraph 7.

17 8. The allegations in Paragraph 8, which pertain to BAH GmbH, require no response
18 because BAH GmbH is no longer a defendant in this action.

19 9. The allegations in Paragraph 9 that pertain to BAH GmbH require no response
20 because BAH GmbH is no longer a defendant in this action. BHC denies that BAH GmbH and
21 BHC are "affiliated companies under common control." BAH GmbH is a wholly owned subsidiary
22 of Elanco Animal Health GmbH, which is a wholly owned subsidiary of Elanco Animal Health Inc.
23 BHC is a wholly owned subsidiary of Bayer AG, which entered into an agreement in 2019 with
24 Elanco Animal Health Inc. for the sale of the Bayer Animal Health business to Elanco Animal
25 Health Inc. BHC admits that it previously licensed a patent covering an imidacloprid topical
26 product from another entity and otherwise denies the allegations in the second sentence of
27 Paragraph 9. BHC objects to BAH GmbH and BHC being collectively referred to as "Bayer" and
28 responds only as to itself. *See supra* at n.2.

JURISDICTION AND VENUE

10. BHC does not dispute subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1337(a) over the subject matter as currently pleaded. BHC admits that Tevra purports to state claims and seeks relief under Sections 3, 4 and 16 of the Clayton Act, 15 U.S.C. §§ 14, 15 and 26, as well as Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2. BHC otherwise denies the allegations in Paragraph 10.

11. BHC does not dispute that the Court has personal jurisdiction over BHC in this case. BHC admits that it transacted business in the United States, including in California, that it sold imidacloprid products to retailers in the United States, and that it researched, developed, sold, shipped, and/or delivered imidacloprid topicals in the United States. Tevra's allegations regarding anticompetitive conduct set forth legal conclusions for which no response is required. BHC otherwise denies the allegations in Paragraph 11.

12. The allegations in Paragraph 12 that pertain to BAH GmbH require no response because BAH GmbH is no longer a defendant in this action. BHC does not dispute that the Court has personal jurisdiction over BHC in this case and otherwise denies the allegations in Paragraph 12.

13. The allegations in Paragraph 13, which pertain to BAH GmbH, require no response because BAH GmbH is no longer a defendant in this action. To the extent the allegations are directed at BHC, BHC admits that it sold a product named Defense Care at PetSmart and otherwise denies the allegations in Paragraph 13.

14. BHC does not dispute venue in this District and does not dispute that the Court has personal jurisdiction over BHC. BHC otherwise denies the allegations in Paragraph 14.

FACTS COMMON TO ALL COUNTS

A. The Relevant Antitrust Market³

15. The allegations in Paragraph 15 regarding the relevant antitrust market set forth a legal conclusion for which no response is required. BHC otherwise denies the allegations in

³ BHC has reproduced Tevra's headings for purposes of organization and clarity. However, in reproducing Tevra's headings, BHC does not admit the truthfulness of Tevra's headings, allegations, or characterizations.

Paragraph 15.

16. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of Paragraph 16, and therefore denies them. The allegations in the final sentence of Paragraph 16 set forth a legal conclusion for which no response is required.

17. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17, and therefore denies them.

1. The Product Market

18. The allegations in Paragraph 18 regarding the relevant product market set forth a legal conclusion for which no response is required. The documents referenced in Section A.1.a, Section A.1.c-A.1.d, and Section A.1.e-A.1.g speak for themselves, and BHC otherwise denies Tevra's characterizations of those documents. BHC otherwise denies the allegations in Paragraph 18.

a. Economic substitutes and cross-elasticity of demand

19. The allegations in the first and second sentences of Paragraph 19 set forth legal conclusions for which no response is required. BHC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 19, and therefore denies them.

20. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20, and therefore denies them.

21. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21, and therefore denies them.

22. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22, and therefore denies them.

23. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23, and therefore denies them.

24. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24, and therefore denies them.

25. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25, and therefore denies them.

b. Single-product markets for pharmaceuticals and chemicals

26. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 26, and therefore denies them. The remaining allegations in Paragraph 26 set forth legal conclusions for which no response is required.

27. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 27, and therefore denies them. The remaining allegations in Paragraph 27 set forth legal conclusions for which no response is required.

c. Defining relevant antitrust markets using the Hypothetical Monopolist Test

28. The allegations in Paragraph 28 set forth legal conclusions for which no response is required.

29. The allegations in Paragraph 29 set forth a legal conclusion for which no response is required.

30. The allegations in Paragraph 30 set forth a legal conclusion for which no response is required.

31. The allegations in Paragraph 31 set forth legal conclusions for which no response is required.

32. The allegations in Paragraph 32 set forth legal conclusions for which no response is required.

33. BHC notes that Tevra cites the Horizontal Merger Guidelines. That document speaks for itself, and BHC denies the allegations in Paragraph 33 to the extent they are inconsistent with that document. BHC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 33, and therefore denies them.

34. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third and fourth sentences of Paragraph 34, and therefore denies them. The remaining allegations in Paragraph 34 set forth legal conclusions for which no response is required.

35. BHC notes that Tevra cites the Horizontal Merger Guidelines. That document speaks for itself, and BHC denies the allegations in Paragraph 35 to the extent they are inconsistent with that document. The remaining allegations in Paragraph 35 set forth a legal conclusion for

1 which no response is required.

2 36. BHC admits that it monitors the performance of fipronil topicals such as Frontline,
3 non-topical imidacloprid products such as Seresto flea collars, and Advantus soft chews. The
4 allegations in the final sentence of Paragraph 36 set forth a legal conclusion for which no response
5 is required. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
6 remaining allegations in Paragraph 36, and therefore denies them.

7 37. BHC admits that other flea and tick treatments exist, such as sprays, shampoos, and
8 drugs available only by prescription. The remaining allegations in Paragraph 37 set forth legal
9 conclusions for which no response is required.

10 38. The allegations in Paragraph 38 set forth legal conclusions for which no response is
11 required.

12 **d. Application of the Hypothetical Monopolist Test to Several of Bayer's documents**
13 **and datasets**

14 39. The allegations in Paragraph 39 regarding the relevant antitrust market set forth legal
15 conclusions for which no response is required. BHC otherwise denies the allegations in Paragraph
16 39.

17 **i. Bayer documents showing significant price increases from between 2011 and**
18 **2016, including the PetCo dataset**

19 40. The allegation that BHC's alleged price increases were "both significant and non-
20 transitory within the meaning of SSNIP" sets forth a legal conclusion for which no response is
21 required. The documents cited in Paragraph 40 speak for themselves, and BHC otherwise denies
22 Tevra's characterizations of those documents. BHC lacks knowledge or information sufficient to
23 form a belief as to the truth of the remaining allegations in Paragraph 40, and therefore denies them.

24 41. BHC admits that a March 2017 Strategic Leadership Team meeting was held in
25 Neuss, Germany. The document in question presented at that meeting speaks for itself, and BHC
26 otherwise denies Tevra's characterizations of that document. The second, third, and final sentences
27 of Paragraph 41 set forth legal conclusions for which no response is required. BHC lacks
28 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in

1 Paragraph 41, and therefore denies them.

2 42. The allegations in the second sentence of Paragraph 42 set forth legal conclusions for
3 which no response is required. The documents referenced in the third sentence of Paragraph 42
4 speak for themselves, and BHC otherwise lacks knowledge or information sufficient to form a
5 belief as to the content of those documents. BHC lacks knowledge or information sufficient to form
6 a belief as to the truth of the remaining allegations in Paragraph 42, and therefore denies them.

7 43. The allegations in the first sentence of Paragraph 43 regarding the relevant antitrust
8 market set forth legal conclusions for which no response is required, and BHC otherwise denies the
9 allegations in the first sentence of Paragraph 43. BHC lacks knowledge or information sufficient to
10 form a belief as to the truth of the remaining allegations in Paragraph 43, and therefore denies them.

11 44. BHC denies that fipronil topicals and certain non-topical flea and tick treatments are
12 not strong substitutes for BHC's imidacloprid topical products. The remaining allegations in
13 Paragraph 44 regarding the relevant antitrust market set forth legal conclusions for which no
14 response is required.

15 **ii. Bayer documents relating to generic price differentials**

16 45. The allegations in the first sentence of Paragraph 45 set forth legal conclusions for
17 which no response is required. The document(s) referenced in the second and third sentences of
18 Paragraph 45 speak for themselves, and BHC otherwise lacks knowledge or information sufficient
19 to form a belief as to the content of those documents.

20 46. BHC lacks knowledge or information sufficient to form a belief as to the price
21 differential between K9 Advantix® and Frontline. The remainder of the allegations in Paragraph 46
22 set forth legal conclusions for which no response is required.

23 47. The document cited in the second and third sentences of Paragraph 47 speaks for
24 itself, and BHC otherwise denies Tevra's characterizations of that document. BHC lacks
25 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
26 Paragraph 47, and therefore denies them.

27 48. The allegations regarding the relevant antitrust market and the allegations in the final
28 sentence of Paragraph 48 set forth legal conclusions for which no response is required. BHC lacks

1 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
2 Paragraph 48, and therefore denies them.

3 49. Tevra's allegations regarding the relevant antitrust market set forth legal conclusions
4 for which no response is required. The documents cited in the final sentence of Paragraph 49 speak
5 for themselves, and BHC otherwise denies Tevra's characterizations of those documents. BHC
6 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
7 allegations in Paragraph 49, and therefore denies them.

8 50. The allegations in the final sentence of Paragraph 50 and Tevra's allegation that
9 BHC engaged in a multi-faceted strategy to "block" generic competition set forth legal conclusions
10 for which no response is required. BHC lacks knowledge or information sufficient to form a belief
11 as to the truth of the remaining allegations in Paragraph 50, and therefore denies them.

12 **iii. Several Bayer documents contain data to support direct estimates of high cross-**
13 **elasticity between Imidacloprid topicals but low cross-elasticity between**
14 **Imidacloprid and Fipronil topicals**

15 51. The documents referenced in the first and second sentences of Paragraph 51 speak
16 for themselves, and BHC otherwise lacks knowledge or information sufficient to form a belief as to
17 the content of those documents. The final two sentences of Paragraph 51 set forth legal conclusions
18 for which no response is required. BHC lacks knowledge or information sufficient to form a belief
19 as to the truth of the remaining allegations in Paragraph 51, and therefore denies them.

20 52. The documents cited in the first and second sentences of Paragraph 52 speak for
21 themselves, and BHC otherwise denies Tevra's characterizations of those documents. BHC lacks
22 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
23 Paragraph 52, and therefore denies them.

24 53. The data cited in the first and final sentences of Paragraph 53 speak for themselves,
25 and BHC otherwise denies Tevra's characterizations of that data. BHC's purchase agreements with
26 retailers speak for themselves, and BHC otherwise denies Tevra's characterizations of those
27 agreements. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
28 remaining allegations in Paragraph 53, and therefore denies them.

54. Tevra's allegations regarding the relevant antitrust market set forth legal conclusions

1 for which no response is required. BHC lacks knowledge or information sufficient to form a belief
2 as to the truth of the remaining allegations in Paragraph 54, and therefore denies them.

3 **e. Examination of the Elanco/Bayer acquisition by U.S. FTC**

4 55. BHC admits that its animal health business was acquired by Elanco and that the U.S.
5 Federal Trade Commission (“FTC”) reviewed the transaction. Tevra’s allegations regarding the
6 relevant antitrust market set forth legal conclusions for which no response is required. BHC
7 otherwise denies the allegations in Paragraph 55.

8 56. BHC admits that it was required to make disclosures to the FTC about animal
9 medications it manufactured, including disclosures regarding its imidacloprid topical products.
10 BHC lacks knowledge or information sufficient to form a belief as to the truth of the remaining
11 allegations in Paragraph 56, and therefore denies them.

12 57. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
13 allegations in Paragraph 57, and therefore denies them.

14 58. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations in Paragraph 58, and therefore denies them.

16 59. BHC notes that the allegations in Paragraph 59 purport to characterize the FTC’s
17 Analysis of Agreement Containing Consent Orders to Aid Public Comment, *In the Matter of Elanco*
18 *Animal Health, Inc., and Bayer Animal Health, GmbH*, File No. 1910198. That document speaks
19 for itself. BHC denies the allegations in Paragraph 59 to the extent they are inconsistent with that
20 document.

21 60. BHC notes that the allegations in Paragraph 60 purport to characterize the FTC’s
22 Analysis of Agreement Containing Consent Orders to Aid Public Comment, *In the Matter of Elanco*
23 *Animal Health, Inc., and Bayer Animal Health, GmbH*, File No. 1910198. That document speaks
24 for itself. BHC denies the allegations in Paragraph 60 to the extent they are inconsistent with that
25 document.

26 61. BHC notes that the allegations in Paragraph 61 purport to characterize the FTC’s
27 Analysis of Agreement Containing Consent Orders to Aid Public Comment, *In the Matter of Elanco*
28 *Animal Health, Inc., and Bayer Animal Health, GmbH*, File No. 1910198, and the proposed Consent

1 Agreement referenced therein. Those documents speak for themselves. BHC denies the allegations
2 in Paragraph 61 to the extent they are inconsistent with those documents.

3 62. BHC admits that imidacloprid and fipronil topicals have a different active ingredient
4 and denies that they have significantly different therapeutic actions. Tevra's allegations regarding
5 the relevant antitrust market set forth legal conclusions for which no response is required. BHC
6 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
7 allegations in Paragraph 62, and therefore denies them.

8 **f. Imidacloprid topicals are distinct from and non-interchangeable with Fipronil**
9 **topicals.**

10 63. BHC admits that the active ingredients in flea and tick treatments are insecticides
11 that kill and/or repel fleas and/or ticks. BHC admits that two common insecticides used for flea and
12 tick protection are fipronil, the active ingredient in the topical treatment Frontline and other fipronil-
13 based products, and imidacloprid, the active ingredient in BHC's Advantage® II and K9 Advantix®
14 II products and other imidacloprid-based products. BHC lacks knowledge or information sufficient
15 to form a belief as to the truth of the remaining allegations in Paragraph 63, and therefore denies
16 them.

17 64. BHC admits that costs associated with developing its imidacloprid topical products
18 include costs associated with obtaining insecticides, developing methods of application for its
19 products, obtaining regulatory approval from the U.S. Environmental Protection Agency, and
20 marketing, selling, and delivering its products. BHC lacks knowledge or information sufficient to
21 form a belief as to the truth of the remaining allegations in Paragraph 64, and therefore denies them.

22 65. BHC denies the allegations in the first sentence of Paragraph 65. BHC lacks
23 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
24 Paragraph 65, and therefore denies them.

25 66. BHC admits that its imidacloprid topical products repel fleas, ticks and mosquitoes.
26 BHC lacks knowledge or information sufficient to form a belief as to the truth of the remaining
27 allegations in Paragraph 66, and therefore denies them.

28 67. BHC denies the allegations in the first sentence of Paragraph 67. The document

1 cited in the second sentence of Paragraph 67 speaks for itself, and BHC otherwise denies Tevra's
2 characterization of that document.

3 68. BHC contracts with distributors and retailers speak for themselves, and BHC
4 otherwise denies Tevra's characterizations of those contracts.

5 69. The documents cited in the first sentence of Paragraph 69 speak for themselves, and
6 BHC otherwise denies Tevra's characterization of those documents. BHC lacks knowledge or
7 information sufficient to form a belief as to the truth of the allegations in the second sentence of
8 Paragraph 69, and therefore denies them. BHC denies the remaining allegations in Paragraph 69.

9 70. The documents and data cited in Paragraph 70 speak for themselves, and BHC
10 otherwise denies Tevra's characterization of those documents and data. Tevra's allegations
11 regarding the relevant antitrust market set forth legal conclusions for which no response is required.

12 71. The Nielsen data referenced in Paragraph 71 speaks for itself, and BHC otherwise
13 denies Tevra's characterization of that data. BHC lacks knowledge or information sufficient to
14 form a belief as to the truth of the remaining allegations in Paragraph 71, and therefore denies them.

15 72. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations in Paragraph 72, and therefore denies them.

17 **g. Topical flea and tick medications and delivery systems**

18 73. BHC admits that flea and tick treatments for pets include flea collars, topicals, oral
19 medications, sprays, wipes, and shampoos. The documents and data cited in the second sentence of
20 Paragraph 73 speak for themselves, and BHC otherwise denies Tevra's characterization of those
21 documents and data. Tevra's allegations regarding the relevant antitrust market set forth legal
22 conclusions for which no response is required. BHC denies the remaining allegations in Paragraph
23 73.

24 74. BHC admits that its Seresto® flea and tick collar can offer up to eight months of
25 protection against fleas and ticks. BHC lacks knowledge or information sufficient to form a belief
26 as to the truth of the remaining allegations in Paragraph 74, and therefore denies them.

27 75. BHC admits that topical flea and tick treatments are distinct from flea collars, though
28 BHC makes no representations regarding whether these products are in the same relevant product

1 market. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in the second sentence of Paragraph 75, and therefore denies them.

3 76. BHC admits that flea and tick treatments may also be given to pets orally. BHC
4 admits that its Advantus product can be administered up to once per day and is targeted at killing
5 adult fleas but denies that all oral products must be administered daily. BHC lacks knowledge or
6 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 76,
7 and therefore denies them.

8 77. BHC admits that flea and tick treatments include sprays, wipes, and shampoos.
9 Tevra's allegations regarding the relevant antitrust market set forth legal conclusions for which no
10 response is required. BHC lacks knowledge or information sufficient to form a belief as to the truth
11 of the remaining allegations in Paragraph 77, and therefore denies them.

12 78. Tevra's allegations regarding the relevant antitrust market set forth legal conclusions
13 for which no response is required. BHC lacks knowledge or information sufficient to form a belief
14 as to the truth of the remaining allegations in Paragraph 78, and therefore denies them.

15 79. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
16 remaining allegations in Paragraph 79, and therefore denies them.

17 **2. The Geographic Market**

18 80. BHC does not dispute that the relevant geographic market is the United States, and
19 Tevra's allegations regarding antitrust violations set forth legal conclusions for which no response is
20 required. BHC admits the allegations in the second and third sentences of Paragraph 80.

21 **B. Fipronil generics lowered prices of Fipronil flea and tick medications.**

22 81. BHC admits that Frontline is a top-selling fipronil topical brand. BHC lacks
23 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
24 Paragraph 81, and therefore denies them.

25 82. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations in Paragraph 82, and therefore denies them.

27 83. Tevra's allegations regarding the relevant antitrust market set forth legal conclusions
28 for which no response is required. BHC lacks knowledge or information sufficient to form a belief

as to the truth of the remaining allegations in Paragraph 83, and therefore denies them.

84. Tevra's allegations regarding anticompetitive conduct and the relevant antitrust market set forth legal conclusions for which no response is required. BHC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 84, and therefore denies them.

C. Bayer has substantially foreclosed Imidacloprid topical generics from the relevant market.

1. Imidacloprid products, including Advantix

85. Tevra's allegations in Paragraph 85 set forth legal conclusions for which no response is required.

86. BHC admits that it registered imidacloprid topical products with the U.S. Environmental Protection Agency, providing a 10-year period of exclusivity, and denies that BHC was the owner of patents covering those imidacloprid topical products. BHC admits that it engaged in scientific research in developing imidacloprid-based products. The remaining allegations in Paragraph 86 set forth legal conclusions for which no response is required.

87. BHC denies that it introduced its Advantage line of Imidacloprid topicals in 2002 and admits that its line of products now includes Advantage® II and K9 Advantix® II. BHC denies that it was the owner of patents covering its imidacloprid-based flea and tick products.

88. BHC admits that CAP IM Supply, Inc. was granted conditional registration by EPA for its generic imidacloprid topical in 2016. BHC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 88, and therefore denies them.

89. BHC admits that on May 22, 2017, BHC, BAH GmbH, and Bayer Intellectual Property GmbH filed a patent infringement lawsuit against CAP IM Supply, Inc. in the U.S. District Court for the District of Delaware. BHC admits that the lawsuit was settled and that CAP IM thereafter paid royalties for the use of the patented formula.

90. BHC admits that imidacloprid topicals that have been sold in the U.S. include Advecta, PetLock II, and ParaDefense. BHC admits that it has received royalties from CAP IM Supply, Inc. under the terms of a prior settlement. BHC denies that it had CAP IM's product

1 “PetLock” removed from store shelves at PetCo. BHC lacks knowledge or information sufficient to
 2 form a belief as to the truth of the remaining allegations in Paragraph 90, and therefore denies them.

3 91. Tevra’s allegations regarding illegal maintenance of a monopoly set forth a legal
 4 conclusion for which no response is required. BHC otherwise denies the allegations in Paragraph
 5 91.

6 92. Tevra’s allegations regarding illegal, anticompetitive, and exclusionary actions set
 7 forth legal conclusions for which no response is required. BHC otherwise denies the allegations in
 8 Paragraph 92.

9 **2. Registration of insecticides with EPA and “exclusive use”**

10 93. BHC admits the allegations in the first sentence of Paragraph 93. The allegations in
 11 the second sentence of Paragraph 93 characterize a federal statute. That statute speaks for itself,
 12 and BHC otherwise denies Tevra’s characterizations of that statute.

13 94. The allegations in Paragraph 94 characterize a federal statute. That statute speaks for
 14 itself, and BHC otherwise denies Tevra’s characterizations of that statute.

15 95. The allegations in Paragraph 95 characterize a federal statute. That statute speaks for
 16 itself, and BHC otherwise denies Tevra’s characterizations of that statute.

17 96. The allegations in Paragraph 96 characterize a federal statute. That statute speaks for
 18 itself, and BHC otherwise denies Tevra’s characterizations of that statute.

19 97. BHC admits that imidacloprid and fipronil manufacturers are not presently barred
 20 from entering the market under any FIFRA exclusivity period and admits that patents covered its
 21 imidacloprid topical products. BHC lacks knowledge or information sufficient to form a belief as to
 22 the truth of the remaining allegations in Paragraph 97, and therefore denies them.

23 98. BHC admits that Tevra paid BHC “data compensation” in 2015 for the use of BHC’s
 24 supporting data. BHC lacks knowledge or information sufficient to form a belief as to the truth of
 25 the remaining allegations in Paragraph 98, and therefore denies them.

26 **D. Tevra’s attempts to enter the market for Imidacloprid topicals**

27 99. BHC admits that it registered imidacloprid topical products with the U.S.
 28 Environmental Protection Agency and denies that it was the owner of patents covering its

1 imidacloprid topical products. BHC lacks knowledge or information sufficient to form a belief as to
2 the truth of the remaining allegations in Paragraph 99, and therefore denies them.

3 100. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 100, and therefore denies them.

5 101. BHC denies that Tevra's imidacloprid topicals are more effective than BHC's
6 imidacloprid topicals and denies that Tevra's method of delivering the active ingredient to the skin
7 of the pet is superior to BHC's method. BHC admits that Tevra's imidacloprid topicals and BHC's
8 imidacloprid topicals contain the same active ingredient.

9 102. BHC denies that Tevra's imidacloprid topicals kill ticks more effectively than BHC's
10 imidacloprid topicals, denies that Tevra's imidacloprid topicals are less toxic than those produced
11 by BHC, and denies that Tevra's products have a superior delivery method. BHC lacks knowledge
12 or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph
13 102, and therefore denies them.

14 103. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations in Paragraph 103, and therefore denies them.

16 **1. Tevra's successful entry into the separate Fipronil topical market**

17 104. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations in Paragraph 104, and therefore denies them.

19 105. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations in Paragraph 105, and therefore denies them.

21 **2. Tevra was foreclosed from entering the Imidacloprid topical market**

22 106. BHC denies that Tevra's generic imidacloprid product is more effective than BHC's
23 imidacloprid-based products. BHC lacks knowledge or information sufficient to form a belief as to
24 the cost of Tevra's imidacloprid products relative to BHC's imidacloprid products and on that basis
25 denies the allegation that Tevra's products were less expensive. Tevra's allegations regarding
26 illegal monopolization, exclusive dealing, and substantial foreclosure set forth legal conclusions for
27 which no response is required.

28 107. BHC lacks knowledge or information sufficient to form a belief as to the truth of the

allegations in Paragraph 107, and therefore denies them.

108. BHC denies that Tevra's generic imidacloprid topicals are more effective than BHC's brand-name imidacloprid topicals. BHC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 108, and therefore denies them.

109. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 109, and therefore denies them.

110. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 110, and therefore denies them.

111. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 111, and therefore denies them.

E. Bayer's Monopolization and Exclusive Dealing Foreclosed Entry into the Market for Imidacloprid Topicals

112. Tevra's allegations regarding the relevant antitrust market and monopolization set forth legal conclusions for which no response is required. BHC denies the remaining allegations in Paragraph 112.

113. Tevra's allegations regarding the relevant antitrust market, monopolization, and substantial foreclosure set forth legal conclusions for which no response is required. BHC denies the remaining allegations in Paragraph 113.

1. Bayer's "second brand strategy" to block generic entry

114. The allegations in Paragraph 114, which pertain to BAH GmbH, require no response because BAH GmbH is no longer a defendant in this action. To the extent that the allegations in Paragraph 114 are directed at BHC, Tevra's allegations regarding the relevant antitrust market, illegal monopolization, and exclusive dealing set forth legal conclusions for which no response is required. BHC otherwise denies the allegations in Paragraph 114.

115. The document cited in Paragraph 115 speaks for itself, and BHC otherwise denies Tevra's characterizations of that document.

116. BHC admits that it sold an imidacloprid-based flea and tick product named Defense Care at PetSmart. Tevra's reference to a "German Bayer entity" in the first sentence of Paragraph

1 116 requires no response because no German Bayer entities are still defendants in this action. BHC
2 denies the remaining allegations in Paragraph 116.

3 117. BHC admits that it sold an imidacloprid-based flea and tick product named Defense
4 Care at PetSmart in or around 2015. The allegations regarding BAH GmbH require no response
5 because BAH GmbH is no longer a defendant in this action. BHC denies the remaining allegations
6 in Paragraph 117.

7 118. BHC admits that it sold an imidacloprid-based flea and tick product named Defense
8 Care at PetSmart in or around 2015. The documents cited in Paragraph 118 speaks for themselves,
9 and BHC otherwise denies Tevra's characterizations of those documents. The allegations regarding
10 BAH GmbH require no response because BAH GmbH is no longer a defendant in this action. BHC
11 denies the remaining allegations in Paragraph 118.

12 119. The document cited in Paragraph 119 speaks for itself, and BHC otherwise denies
13 Tevra's characterizations of that document.

14 **2. Bayer's "no generics" conspiracy with retailers**

15 120. BHC's purchase agreements with retailers speak for themselves, and BHC otherwise
16 denies Tevra's characterizations of those agreements. Tevra's allegations regarding monopolization
17 set forth legal conclusions for which no response is required. BHC otherwise denies the allegations
18 in Paragraph 120.

19 121. The documents cited in Paragraph 121 speak for themselves, and BHC otherwise
20 denies Tevra's characterizations of those documents. BHC lacks knowledge or information
21 sufficient to form a belief as to whether most of the major distributors and retailers in the U.S.
22 attended the February 15-17, 2016 Distributor Retail Summit and on that basis denies that
23 allegation.

24 122. BHC denies that it had a "no generics" agreement with retailers and distributors and
25 otherwise denies the allegations in the first sentence of Paragraph 122. The documents referenced
26 in the second sentence of Paragraph 122 speak for themselves, and BHC otherwise lacks knowledge
27 or information sufficient to form a belief as to the content of those documents.

28 123. Tevra's allegations regarding illegal conduct and monopolization set forth legal

1 conclusions for which no response is required. BHC denies the remaining allegations in Paragraph
2 123.

3 124. The written presentations cited in Paragraph 124 speak for themselves, and BHC
4 otherwise denies Tevra's characterizations of those documents.

5 125. The written presentation cited in Paragraph 125 speaks for itself, and BHC
6 otherwise denies Tevra's characterizations of that document. BHC admits that it has received
7 royalties from CAP IM Supply, Inc. under the terms of a prior settlement. BHC lacks knowledge as
8 to what products PetCo was carrying in August 2016 and on that basis denies the allegation that
9 PetCo was carrying PetLock in August 2016. BHC denies the remaining allegations in Paragraph
10 125.

11 126. The written presentation cited in Paragraph 126 speaks for itself, and BHC otherwise
12 denies Tevra's characterizations of that document.

13 127. The written presentation cited in Paragraph 127 speaks for itself, and BHC otherwise
14 denies Tevra's characterizations of that document.

15 128. The written presentation cited in Paragraph 128 speaks for itself, and BHC otherwise
16 denies Tevra's characterizations of that document. Tevra's allegations regarding monopolization
17 set forth a legal question for which no response is required.

18 129. The written presentation cited in Paragraph 129 speaks for itself, and BHC otherwise
19 denies Tevra's characterizations of that document.

20 130. The written presentation cited in Paragraph 130 speaks for itself, and BHC otherwise
21 denies Tevra's characterizations of that document.

22 131. Tevra's allegations in Paragraph 131 regarding price-fixing, the Sherman Act, and
23 the Clayton Act set forth legal conclusions for which no response is required. BHC otherwise
24 denies the allegations in Paragraph 131.

25 132. BHC admits that its written contracts do not include the phrase "no generics" and
26 admits that it sold its U.S. animal health assets to Elanco. BHC lacks knowledge or information
27 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 132, and
28 therefore denies them.

1 133. Tevra’s allegations regarding foreclosure set forth legal conclusions for which no
2 response is required. BHC otherwise lacks knowledge or information sufficient to form a belief as
3 to the truth of the allegations in Paragraph 133, and therefore denies them.

4 134. BHC admits that its written contracts do not include the phrase “no generics.” BHC
5 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
6 allegations in Paragraph 134, and therefore denies them.

7 135. BHC admits the allegations in the first sentence of Paragraph 135. BHC denies that
8 Tevra’s generic imidacloprid topicals are more effective than BHC’s K9 Advantix® II product.
9 BHC lacks knowledge or information sufficient to form a belief as to the truth of the remaining
10 allegations in Paragraph 135, and therefore denies them.

11 136. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in Paragraph 136, and therefore denies them.

13 137. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations in Paragraph 137, and therefore denies them.

15 138. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations in Paragraph 138, and therefore denies them.

17 139. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations in Paragraph 139, and therefore denies them.

19 140. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations in Paragraph 140, and therefore denies them.

21 141. BHC admits that its Seresto® flea and tick collar is protected by a U.S. patent. BHC
22 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
23 allegations in Paragraph 141, and therefore denies them.

24 142. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegation in Paragraph 142, and therefore denies it.

26 143. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations in Paragraph 143, and therefore denies them.

28 144. BHC lacks knowledge or information sufficient to form a belief as to the truth of the

1 allegations in Paragraph 144, and therefore denies them.

2 145. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations in Paragraph 145, and therefore denies them.

4 146. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations in Paragraph 146, and therefore denies them.

6 147. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
7 allegations in Paragraph 147, and therefore denies them.

8 148. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations in Paragraph 148, and therefore denies them.

10 149. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
11 allegations in Paragraph 149, and therefore denies them.

12 150. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
13 allegations in Paragraph 150, and therefore denies them.

14 151. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations in Paragraph 151, and therefore denies them.

16 152. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations in Paragraph 152, and therefore denies them.

18 153. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
19 allegations in Paragraph 153, and therefore denies them.

20 154. BHC denies that it engaged in a “no generics” conspiracy with distributors and
21 retailers. BHC notes that the document cited in Paragraph 154 pertains to communications between
22 employees of BAH GmbH, which is no longer a defendant in this action. That document speaks for
23 itself, and BHC otherwise denies Tevra’s characterizations of that document. BHC denies the
24 remaining allegations in Paragraph 154.

25 **3. Bayer’s direct payments to remove generic competition**

26 155. BHC denies the allegations in Paragraph 155.

27 156. The document(s) referenced in Paragraph 156 speak for themselves, and BHC
28 otherwise lacks knowledge or information sufficient to form a belief as to the content of those

documents.

157. The document cited in Paragraph 157 speaks for itself, and BHC otherwise denies Tevra's characterizations of that document.

158. The document cited in Paragraph 158 speaks for itself, and BHC otherwise denies Tevra's characterizations of that document.

4. Bayer changed its Purchase Agreements to block generic entry

159. BHC admits that it entered into purchase agreements with retailers and otherwise denies the allegations in Paragraph 159.

160. BHC admits that it offered an "imidacloprid exclusivity discount" in certain agreements. Those agreements speak for themselves, and BHC otherwise denies Tevra's characterizations of those agreements. BHC otherwise denies the allegations in Paragraph 160.

161. BHC admits that it offered a "Preferred Placement and Promotions Discount" in certain agreements. Those agreements speak for themselves, and BHC otherwise denies Tevra's characterizations of those agreements. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third and fourth sentences of Paragraph 161, and therefore denies them. BHC otherwise denies the allegations in Paragraph 161.

162. BHC admits that it has offered discounts in certain retailer and distributor agreements, including an imidacloprid exclusivity discount, base discount, SKU discount, Preferred Placement and Promotions Discount, trade funds discount, and/or growth rebate. Those agreements speak for themselves, and BHC otherwise denies Tevra's characterizations of those agreements. BHC otherwise denies the allegations in Paragraph 162.

163. BHC admits that the discounts and rebates available to distributors and/or retailers may vary by agreement. Those purchase agreements speak for themselves, and BHC otherwise denies Tevra's characterizations of those agreements. BHC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the final sentence of Paragraph 163, and therefore denies them.

164. BHC denies that its purchase agreements are not easily terminable by retailers or distributors. Tevra's allegations regarding the relevant antitrust market and monopolization within

1 that market set forth legal conclusions for which no response is required. BHC denies the
2 allegations in the third and fourth sentences of Paragraph 164. BHC lacks knowledge or
3 information sufficient to form a belief as to the truth of the allegations in the final sentence of
4 Paragraph 164, and therefore denies them.

5 165. BHC denies that its purchase agreements are not easily terminable by retailers or
6 distributors. BHC lacks knowledge as to the reasons that retailers and/or distributors accept or do
7 not accept the terms of BHC's agreements and therefore denies the remaining allegations in
8 Paragraph 165.

9 166. BHC's purchase agreements speak for themselves, and BHC otherwise denies
10 Tevra's characterizations of those agreements in Paragraph 166. Tevra's allegations regarding the
11 relevant antitrust market, substantial foreclosure, exclusive dealing, an anticompetitive scheme, and
12 illegal agreements set forth legal conclusions for which no response is required. BHC lacks
13 knowledge as to whether retailers have told Tevra that they have entered into "no generics"
14 agreements with BHC and on that basis denies those allegations. BHC denies the remaining
15 allegations in Paragraph 166.

16 167. BHC denies that it has entered into any verbal or written no-generics agreements and
17 denies that its agreements are not easily terminable. Tevra's allegation that BHC's agreements act
18 as *de facto* long-term exclusive dealing agreements and Tevra's allegations regarding the relevant
19 antitrust market and alleged anticompetitive conduct set forth legal conclusions for which no
20 response is required. BHC's purchase agreements speak for themselves, and BHC otherwise denies
21 Tevra's characterizations of those agreements in Paragraph 167. BHC lacks knowledge or
22 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 167,
23 and therefore denies them.

24 168. BHC denies that it has entered into any verbal or written no-generics agreements and
25 denies that its agreements are not easily terminable. Tevra's allegation that BHC's agreements act
26 as *de facto* long-term exclusive dealing agreements and Tevra's allegations regarding the relevant
27 antitrust market and alleged anticompetitive conduct set forth legal conclusions for which no
28 response is required. BHC denies the remaining allegations in Paragraph 168.

1 169. BHC denies that it has a verbal understanding or agreement with retailers and/or
2 distributors that they will not do business with generic manufacturers of imidacloprid topicals.
3 Tevra's allegation that BHC's agreements act as *de facto* long-term exclusive dealing agreements
4 and Tevra's allegations regarding anticompetitive discounts set forth legal conclusions for which no
5 response is required. BHC lacks knowledge as to what retailers told Tevra and on that basis denies
6 Tevra's allegations regarding retailers' statements to Tevra.

7 **5. Bayer succeeded in maintaining its monopoly and foreclosing competition**
8 **through exclusive dealing**

9 170. The document cited in Paragraph 170 speaks for itself, and BHC otherwise denies
10 Tevra's characterizations of that document.

11 171. Tevra's allegations regarding the relevant antitrust market, monopolization within
12 that market, and an alleged four-part strategy to substantially foreclose generic competition set forth
13 legal conclusions for which no response is required. BHC denies that it owned the patents covering
14 its imidacloprid topical products and admits that it does not have exclusive use of its EPA
15 registration data. BHC lacks knowledge or information sufficient to form a belief as to the truth of
16 Tevra's allegations regarding price and profitability, which are lacking in specificity, and on that
17 basis denies them. BHC denies the remaining allegations in Paragraph 171.

18 172. Tevra's allegations regarding the relevant antitrust market, substantial foreclosure
19 within that market, and anticompetitive discounts set forth legal conclusions for which no response
20 is required. BHC admits that certain retailer agreements have been renewed by retailers who
21 continue doing business today. BHC denies the remaining allegations in Paragraph 172.

22 173. BHC admits that imidacloprid topicals are sold in several different sales channels in
23 the U.S., including pet specialty retailers, internet retailers, general retailers, veterinarians, and
24 direct-to-consumer sales. The document cited in Paragraph 173 speaks for itself, and BHC
25 otherwise denies Tevra's characterizations of that document.

26 174. The document cited in Paragraph 174 speaks for itself, and BHC otherwise denies
27 Tevra's characterizations of that document.

28 175. Tevra's allegations regarding the relevant antitrust market and substantial foreclosure

1 within that market set forth legal conclusions for which no response is required. BHC lacks
2 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
3 Paragraph 175, and therefore denies them.

4 176. BHC denies that it has a “no-generics rule.” Tevra’s allegations regarding the
5 relevant antitrust market, substantial foreclosure within that market, and anticompetitive discounts
6 set forth legal conclusions for which no response is required. BHC lacks knowledge or information
7 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 176, and
8 therefore denies them.

9 177. BHC denies that it has a “no-generics rule.” Tevra’s allegations regarding the
10 relevant antitrust market, substantial foreclosure within that market, and anticompetitive discounts
11 set forth legal conclusions for which no response is required. BHC lacks knowledge or information
12 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 177, and
13 therefore denies them.

14 178. Tevra’s allegations regarding the relevant antitrust market and substantial foreclosure
15 within that market set forth legal conclusions for which no response is required. The “Channel
16 Split” document cited in Paragraph 178 speaks for itself, and BHC otherwise denies Tevra’s
17 characterizations of that document. BHC lacks knowledge or information sufficient to form a belief
18 as to the truth of the remaining allegations in Paragraph 178, and therefore denies them.

19 179. BHC denies that it engaged in a “no generics” conspiracy. Tevra’s allegations
20 regarding the relevant antitrust market and substantial foreclosure within that market set forth legal
21 conclusions for which no response is required. BHC lacks knowledge or information sufficient to
22 form a belief as to the truth of the remaining allegations in Paragraph 179, and therefore denies
23 them.

24 **F. BAH GmbH actively participated in monopoly maintenance and exclusive dealing in the**
25 **U.S.**

26 180. The allegations in Paragraph 180, which pertain to BAH GmbH, require no response
27 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
28 Paragraph 180 are directed at BHC, the documents referenced in Paragraph 180 speak for

1 themselves, and BHC otherwise lacks knowledge or information sufficient to form a belief as to the
2 content of those documents.

3 181. The allegations in Paragraph 181, which pertain to BAH GmbH, require no response
4 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
5 Paragraph 181 are directed at BHC, the document cited in Paragraph 181 speaks for itself, and BHC
6 otherwise denies Tevra's characterizations of that document. BHC denies the remaining allegations
7 in Paragraph 181.

8 182. The allegations in Paragraph 182, which pertain to BAH GmbH, require no response
9 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
10 Paragraph 182 are directed at BHC, the documents referenced in Paragraph 182 speak for
11 themselves, and BHC otherwise denies Tevra's characterizations of those documents. BHC lacks
12 information regarding the "message" repeated by Mario Andreoli and on that basis denies the
13 allegation pertaining to Andreoli in Paragraph 182.

14 183. The allegations in Paragraph 183, which pertain to BAH GmbH, require no response
15 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
16 Paragraph 183 are directed at BHC, the document(s) cited in Paragraph 183 speak for themselves,
17 and BHC otherwise denies Tevra's characterizations of those documents. BHC lacks knowledge or
18 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 183,
19 and therefore denies them.

20 184. The allegations in Paragraph 184, which pertain to BAH GmbH, require no response
21 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
22 Paragraph 184 are directed at BHC, Jeriel Chua's testimony speaks for itself, and BHC otherwise
23 denies Tevra's characterization of that testimony.

24 185. The allegations in Paragraph 185, which pertain to BAH GmbH, require no response
25 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
26 Paragraph 185 are directed at BHC, BHC notes that the document cited in Paragraph 185 pertains to
27 communications between employees of BAH GmbH, which is no longer a defendant in this action.
28 That document speaks for itself, and BHC otherwise denies Tevra's characterizations of that

1 document.

2 186. The allegations in Paragraph 186, which pertain to BAH GmbH, require no response
3 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
4 Paragraph 186 are directed at BHC, the document cited in Paragraph 186 speaks for itself, and BHC
5 otherwise denies Tevra's characterizations of that document.

6 187. The allegations in Paragraph 187, which pertain to BAH GmbH, require no response
7 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
8 Paragraph 187 are directed at BHC, the document cited in Paragraph 187 speaks for itself, and BHC
9 otherwise denies Tevra's characterizations of that document. BHC lacks knowledge or information
10 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 187, and
11 therefore denies them.

12 188. The allegations in Paragraph 188, which pertain to BAH GmbH, require no response
13 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
14 Paragraph 188 are directed at BHC, BHC notes that the document cited in Paragraph 188 pertains to
15 a communication authored by an employee of BAH GmbH, which is no longer a defendant in this
16 action. That document speaks for itself, and BHC otherwise denies Tevra's characterizations of that
17 document.

18 189. The allegations in Paragraph 189, which pertain to BAH GmbH, require no response
19 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
20 Paragraph 189 are directed at BHC, BHC notes that the document cited in Paragraph 189 pertains to
21 a communication authored by an employee of BAH GmbH, which is no longer a defendant in this
22 action. That document speaks for itself, and BHC otherwise denies Tevra's characterizations of that
23 document.

24 190. The allegations in Paragraph 190, which pertain to BAH GmbH, require no response
25 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
26 Paragraph 190 are directed at BHC, BHC notes that the document cited in Paragraph 190 pertains to
27 a presentation allegedly authored by BAH GmbH, which is no longer a defendant in this action.
28 That document speaks for itself, and BHC otherwise denies Tevra's characterizations of that

1 document.

2 191. The allegations in Paragraph 191, which pertain to BAH GmbH, require no response
3 because BAH GmbH is no longer a defendant in this action. To the extent the allegations in
4 Paragraph 191 are directed at BHC, Tevra's allegations regarding the relevant antitrust market,
5 monopolization, and violations of the Sherman Act and Clayton Act set forth legal conclusions for
6 which no response is required. BHC otherwise denies the allegations in Paragraph 191.

7 **G. Bayer possesses monopoly power in the relevant market.**

8 192. Tevra's allegations in Paragraph 192 regarding the relevant antitrust market and
9 monopoly power within that market set forth legal conclusions for which no response is required.

10 193. Tevra's allegations in Paragraph 193 regarding the relevant antitrust market and
11 monopoly power within that market set forth legal conclusions for which no response is required.

12 194. Tevra's allegations in Paragraph 194 regarding the relevant antitrust market and
13 monopoly power within that market set forth legal conclusions for which no response is required.

14 195. Tevra's allegations regarding exclusionary conduct set forth a legal conclusion for
15 which no response is required.

16 196. Tevra's allegations in Paragraph 196 regarding the relevant antitrust market set forth
17 a legal conclusion for which no response is required. BHC otherwise denies the allegations in
18 Paragraph 196.

19 197. Tevra's allegations in Paragraph 197 regarding the relevant antitrust market, market
20 power within that market, and anticompetitive discounts set forth legal conclusions for which no
21 response is required. BHC denies that it offers financial incentives to "exclude generics." BHC
22 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
23 allegations in Paragraph 197, and therefore denies them.

24 198. Tevra's allegations in Paragraph 198 regarding monopoly power sets forth a legal
25 conclusion for which no response is required.

26 199. Tevra's allegations in Paragraph 199 regarding the relevant antitrust market and
27 BHC's market share within that market set forth legal conclusions for which no response is
28 required.

H. Anticompetitive Effects of Bayer's Conduct.

200. Tevra's allegations in Paragraph 200 regarding the relevant antitrust market set forth legal conclusions for which no response is required. BHC otherwise denies the allegations in Paragraph 200.

I. Lack of Pro-Competitive Justification for Bayer's Actions

201. Tevra's allegations in Paragraph 201 regarding lack of procompetitive justifications set forth legal conclusions for which no response is required. BHC otherwise denies the allegations in Paragraph 201.

J. Antitrust Injury

202. Tevra's allegations in Paragraph 202 regarding antitrust injury set forth a legal conclusion for which no response is required. BHC denies the remaining allegations in Paragraph 202.

203. Tevra's allegations in Paragraph 203 regarding the relevant antitrust market and substantial foreclosure within that market set forth legal conclusions for which no response is required. BHC denies the remaining allegations in Paragraph 203.

204. Tevra's allegations in Paragraph 204 regarding the relevant antitrust market and substantial foreclosure within that market set forth legal conclusions for which no response is required. BHC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 204, and therefore denies them.

205. Tevra's allegations in Paragraph 205 regarding the relevant antitrust market and substantial foreclosure within that market set forth legal conclusions for which no response is required. BHC admits that it has written purchase agreements with retailers and denies the remaining allegations in Paragraph 205.

206. Tevra's allegations in Paragraph 206 regarding the relevant antitrust market and substantial foreclosure within that market set forth legal conclusions for which no response is required. BHC denies the remaining allegations in Paragraph 206.

207. Tevra's allegations in Paragraph 207 regarding the relevant antitrust market and substantial foreclosure within that market set forth legal conclusions for which no response is

1 required. BHC denies the remaining allegations in Paragraph 207.

2 **K. Tevra has attempted to mitigate its damages, without success.**

3 208. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 208, and therefore denies them.

5 209. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 209, and therefore denies them.

7 210. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
8 allegations in Paragraph 210, and therefore denies them.

9 **L. Tevra Has Been Damaged by Bayer's Anti-Competitive Conduct.**

10 211. Tevra's allegations regarding foreclosure and anticompetitive conduct set forth legal
11 conclusions for which no response is required.

12 212. Tevra's allegations regarding illegal conduct set forth legal conclusions for which no
13 response is required. BHC notes that Tevra characterizes a proposed method of estimating lost
14 profits in Paragraph 212. BHC does not endorse Tevra's method of estimating lost profits and on
15 that basis denies the remaining allegations in Paragraph 212.

16 213. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations in Paragraph 213, and therefore denies them.

18 214. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
19 allegations in Paragraph 214, and therefore denies them.

20 215. BHC lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations in Paragraph 215, and therefore denies them.

22 216. BHC denies that Tevra is entitled to any relief in this action and otherwise denies the
23 allegations in Paragraph 216.

24 **CLAIMS FOR RELIEF**

25 **COUNT I**

26 **UNLAWFUL MAINTENANCE OF A MONOPOLY, IN VIOLATION**
27 **OF § 2 SHERMAN ACT, 15 U.S.C. §2**

28 217. BHC incorporates its responses to the preceding paragraphs of the SAC as though
fully set forth herein.

218. Tevra's allegations in Paragraph 218 regarding the relevant antitrust market and BHC's market share within that market set forth legal conclusions for which no response is required. BHC otherwise denies the allegations in Paragraph 218.

219. Tevra's allegations in Paragraph 219 regarding the relevant antitrust market and BHC's market share within that market set forth legal conclusions for which no response is required. BHC otherwise denies the allegations in Paragraph 219.

220. Tevra's allegations in Paragraph 220 regarding the relevant antitrust market, BHC's market share within that market, and substantial foreclosure set forth legal conclusions for which no response is required. BHC otherwise denies the allegations in Paragraph 220.

221. Tevra's allegations in Paragraph 221 regarding the relevant antitrust market, BHC's market share within that market, monopolization, and substantial foreclosure set forth legal conclusions for which no response is required. BHC otherwise denies the allegations in Paragraph 221.

222. Tevra's allegations in Paragraph 222 regarding the relevant antitrust market, BHC's market share within that market, monopolization, and substantial foreclosure set forth legal conclusions for which no response is required. BHC otherwise denies the allegations in Paragraph 222.

Tevra's request for relief following Paragraph 222 sets forth legal conclusions and a prayer for relief to which no response is required.

COUNT II
CONTRACT, COMBINATION, OR CONSPIRACY IN RESTRAINT OF TRADE,
IN VIOLATION OF § 1 SHERMAN ACT, 15 U.S.C. §1
Exclusive Dealing

223. BHC incorporates its responses to the preceding paragraphs of the SAC as though fully set forth herein.

224. Tevra's allegations in Paragraph 224 set forth legal conclusions regarding violations of Section 1 of the Sherman Act for which no response is required. BHC otherwise denies the allegations in Paragraph 224.

225. Tevra's allegations in Paragraph 225 set forth legal conclusions regarding the

1 relevant antitrust market, exclusive dealing, and substantial foreclosure for which no response is
2 required. BHC otherwise denies the allegations in Paragraph 225.

3 226. Tevra's allegations in Paragraph 226 regarding the relevant antitrust market and
4 substantial foreclosure set forth legal conclusions for which no response is required. BHC
5 otherwise denies the allegations in Paragraph 226.

6 227. Tevra's allegations in Paragraph 227 regarding the relevant antitrust market and
7 substantial foreclosure set forth legal conclusions for which no response is required. BHC
8 otherwise denies the allegations in Paragraph 227.

9 Tevra's request for relief following Paragraph 227 sets forth legal conclusions and a prayer
10 for relief to which no response is required.

11 **COUNT III**
12 **EXCLUSIVE DEALING IN VIOLATION OF § 3 CLAYTON ACT, 15 U.S.C. § 14**

13 228. BHC incorporates its responses to the preceding paragraphs of the SAC as though
14 fully set forth herein.

15 229. BHC admits that it has engaged in U.S. interstate commerce by selling goods,
16 including Imidacloprid topicals, to distributors and retailers.

17 230. Tevra's allegations in Paragraph 230 regarding alleged violations of § 3 of the
18 Clayton Act set forth legal conclusions for which no response is required. BHC otherwise denies
19 the allegations in Paragraph 230.

20 231. Tevra's allegations in Paragraph 231 regarding the relevant antitrust market and
21 monopolization set forth legal conclusions for which no response is required. BHC otherwise
22 denies the allegations in Paragraph 231.

23 232. Tevra's allegations in Paragraph 232 regarding the relevant antitrust market and
24 substantial foreclosure set forth legal conclusions for which no response is required. BHC
25 otherwise denies the allegations in Paragraph 232.

26 233. Tevra's allegations in Paragraph 233 regarding the relevant antitrust market,
27 exclusive dealing, and substantial foreclosure set forth legal conclusions for which no response is
28 required. BHC otherwise denies the allegations in Paragraph 233.

Sixth Defense

Tevra's claims are barred, in whole or in part, because the product market alleged in the complaint is not legally cognizable.

Seventh Defense

Tevra's actions are barred, in whole or in part, because Tevra's alleged injuries were not proximately caused by BHC.

Eighth Defense

Tevra's actions are barred, in whole or in part, because Tevra's alleged injuries resulted from intervening causes.

Ninth Defense

Tevra's claims are barred, in whole or in part, because Tevra's purported damages are too speculative to be awarded.

Tenth Defense

Tevra is precluded from recovering damages, in whole or in part, because and to the extent of its failure to mitigate damages.

Eleventh Defense

Tevra's claims are barred, or its recoverable damages are limited, in whole or in part, by the relevant statute of limitations.

BHC reserves the right to assert other defenses as this action proceeds.

PRAYER FOR RELIEF

WHEREFORE, BHC prays that judgment be entered dismissing the Second Amended Complaint with prejudice, directing that Tevra take nothing, and awarding to BHC its costs and fees, along with such other relief as may be just and proper.

Dated: January 20, 2022.

Respectfully submitted,

ARNOLD & PORTER KAYE SCHOLER LLP
DANIEL B. ASIMOW
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LAURA S. SHORES
SEAN M. CALLAGY

By /s/ Daniel B. Asimow
DANIEL B. ASIMOW

Attorneys for Defendant BAYER
HEALTHCARE LLC

CERTIFICATE OF SERVICE

I, Daniel B. Asimow, hereby certify that all counsel of record who are deemed to have consented to electronic service are being served a copy of the foregoing **BAYER HEALTHCARE LLC'S ANSWER TO SECOND AMENDED COMPLAINT** via the Court's CM/ECF system on January 20, 2020.

/s/ Daniel B. Asimow
DANIEL B. ASIMOW